

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE: PHARMACEUTICAL  
INDUSTRY AVERAGE WHOLESAL  
PRICE LITIGATION

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**MDL NO. 1456**

**CIVIL ACTION NO. 1:01-cv-12257-PBS  
1:05-cv-11795-PBS**

**Judge Patti B. Saris**

THIS DOCUMENT RELATES TO:

*State of Florida, et al. v. Alpharma,  
Inc., et al.*

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**MOTION BY STATE OF FLORIDA AND VEN-A-CARE  
TO PARTICIPATE IN JANUARY 27TH HEARING  
REGARDING REMAND AND MEMORANDUM IN SUPPORT THEREOF**

1. On October 15, 2005, briefing was completed on a motion for remand filed by Plaintiffs, the State of Florida and Ven-A-Care of the Florida Keys, the relator.

2. The motion seeks remand on the basis that the complaint asserts only state law claims, none of which have substantial, disputed federal questions embedded in them. The case asserts only Medicaid pricing fraud claims - there are no Medicare co-pay claims and no Medicaid rebate fraud claims.

3. State court actions filed by the Attorneys General of Minnesota, Alabama, Pennsylvania, Wisconsin and Texas have also been removed to federal court. Every federal court that considered the motion to remand prior to transfer to this MDL has remanded the actions to state court. (Those orders and decisions were submitted to the Court by letter dated

December 23, 2005 from the Attorney General of the State of New York).

4. This Court set hearing the motions for remand filed by Kentucky and Illinois. That hearing is scheduled for January 27, 2006. The State of New York has also requested permission to appear at that hearing, as has the International Union of Operating Engineers, Local 68, in connection with their respective motions to remand.

5. Although the other States' motions actually involve somewhat more complex issues pertaining to federal jurisdiction than does Florida's straight Medicaid pricing fraud complaint, there is an essential convergence of issues in all of the States' remand motions. Accordingly, the State of Florida and relator Ven-A-Care request that their motion to remand be calendared for argument on January 27, 2006 together with the other remand motions.

6. Plaintiffs did not initially request oral argument because they believe the remand issue in the instant case is so straightforward. Since the Court is hearing argument in the other cases, however, counsel believe that judicial efficiency and timely resolution of the remand issue will be best achieved by including Florida's motion in the scheduled hearing.

7. Plaintiffs' counsel has consulted with counsel for the States of Kentucky and Illinois and they have no objection to Florida's participation in the hearing. Pursuant to Local Rule 1.7, Plaintiffs' counsel sought consent from Defendants; however, Defendants do not consent to this motion.

Respectfully submitted this 10th day of January, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that I, Jonathan Shapiro, an attorney, caused a true and correct copy of the **Motion by State of Florida and Ven-A-Care To Participate In January 27<sup>th</sup> Hearing Regarding Remand And Memorandum In Support Thereof** to be served on all counsel of record electronically on January 10, 2006, pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LEXIS File & Serve electronic filing service. I hereby also certify that a copy hereof was furnished via telephone fax on this 10<sup>th</sup> day of January, 2006, to the following:

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